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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/813,051

03/31/2004

Stephen Palm

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EXAMINER

VO, DON NGUYEN

ART UNIT

PAPER NUMBER

2611

NOTIFICATION DATE

DELIVERY MODE

04/03/2008

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary	Application No. 10/813,051	Applicant(s) PALM, STEPHEN	
	Examiner Don N. Vo	Art Unit 2611	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-31 is/are pending in the application.
4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-5, 8-14, 17-21, 23-27, 30 and 31 is/are rejected.
- 7) ☒ Claim(s) 6, 7, 15, 16, 22, 28 and 29 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08)

Paper No(s)/Mail Date 03/04/2008; 12/07/2007; 07/24/2007; 06/28/2007;
02/23/2007; 10/27/2006; 09/29/2006; 09/12/2006; 08/01/2006; 06/26/2006;
06/02/2006; 04/24/2006; 03/21/2006; 02/07/2006; 12/02/2005; 09/22/2005;
08/05/2005; 04/06/2005; 03/08/2005; 01/21/2005; 12/23/2004; 11/24/2004;
10/14/2004; 10/01/2004; 08/18/2004 & 06/30/2004.

- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

U.S. Patent and Trademark Office
PTOL-326 (Rev. 08-06)

Office Action Summary

Part of Paper No./Mail Date 20080326

DETAILED ACTION

Specification

1. Applicant is respectfully requested to update the continuation data for the prior applications 10/175,961 and 09/281,813 disclosed on page 1 of the specification, i.e. to provide U.S. Patent No. for such applications.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claim 23 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The recitation of “the non-standard information field” recited at line 2 lacks antecedent basis.

Double Patenting

4. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the “right to exclude” granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

5. Claims 1-5, 8-14, 17-21, 23-27, 30 and 31 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1, 2, 4, 6, 7, 16, 17, 19, 21 and 22 of U.S. Patent No. 6,768,772. Although the conflicting claims are not identical, they are not patentably distinct from each other because claims 1, 2, 4, 6, 7, 16, 17, 19, 21 and 22 of U.S. Patent No. 6,768,772 cover and encompass the limitations of claims 1-5, 8-14, 17-21, 23-27, 30 and 31 of the instant application. Moreover, because omission element(s) in the claims would make the claims in the instant application broader, it would have been obvious to one of ordinary skill in the art at the time of the invention that the claims in the instant application are merely an obvious variation of the claims in the U.S. Patent No. 1, 2, 4, 6, 7, 16, 17, 19, 21 and 22. Furthermore, it is well settled that omission of an element and its function is an obvious expedient if the remaining elements perform the same function as before. In re Karlson, 163 USPQ 184 (CCPA 1963). In light of the foregoing discussion, the broader claims 1-5, 8-14, 17-21, 23-27, 30 and 31 of the instant application are rejected as obvious double patenting over the narrower claims 1, 2, 4, 6, 7, 16, 17, 19, 21 and 22 of U.S. Patent No. 6,768,772.

Regarding claim 1 of the instant application, claim 1 of the U.S. Patent No. 6,768,772 discloses all subject matter claimed except for the more limitations of

the relationship of the carrier frequency of the first, second and third with the base family frequency. However, such extra arrangements of the carrier frequencies are just a matter of selecting the operating frequencies for a particular system design. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the communication apparatus as claimed in claim 1 of the U.S. Patent No. 6,768,772 by omitting the limitations of the relationship of the carrier frequency of the first, second and third with the base family frequency as now claimed in claim 1 of the instant application since such relationships are not needed for the transmitter to perform the same function as before.

Regarding claim 2 of the instant application, claim 4 of the U.S. Patent No. 6,768,772 discloses all subject matter claimed.

Regarding claim 3 of the instant application, claim 1 of the U.S. Patent No. 6,768,772 further discloses all subject matter claimed.

Regarding claim 4 of the instant application, claim 1 of the U.S. Patent No. 6,768,772 further discloses all subject matter claimed.

Regarding claim 5 of the instant application, claim 2 of the U.S. Patent No. 6,768,772 discloses all subject matter claimed.

Regarding claim 8 of the instant application, claim 6 of the U.S. Patent No. 6,768,772 discloses all subject matter claimed.

Regarding claim 9 of the instant application, claim 7 of the U.S. Patent No. 6,768,772 discloses all subject matter claimed.

Regarding claims 10 and 19 of the instant application, claim 16 of the U.S. Patent No. 6,768,772 discloses all subject matter claimed except for the more limitations of the relationship of the carrier frequency of the first, second and third with the base family frequency. However, such extra arrangements of the carrier frequencies are just a matter of selecting the operating frequencies for a particular system design. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the method as claimed in claim 16 of the U.S. Patent No. 6,768,772 by omitting the limitations of the relationship of the carrier frequency of the first, second and third with the base family frequency as now claimed in claims 10 and 19 of the instant application since such relationships are not needed for the step of transmitting to perform the same function as before.

Regarding claim 11 and 20 of the instant application, claim 19 of the U.S. Patent No. 6,768,772 discloses all subject matter claimed.

Regarding claim 12 of the instant application, claim 16 of the U.S. Patent No. 6,768,772 further discloses all subject matter claimed.

Regarding claim 13 of the instant application, claim 16 of the U.S. Patent No. 6,768,772 further discloses all subject matter claimed.

Regarding claim 14 and 21 of the instant application, claim 17 of the U.S. Patent No. 6,768,772 discloses all subject matter claimed.

Regarding claim 17 and 24 of the instant application, claim 21 of the U.S. Patent No. 6,768,772 discloses all subject matter claimed.

Regarding claim 18 and 25 of the instant application, claim 22 of the U.S. Patent No. 6,768,772 discloses all subject matter claimed.

Regarding claim 26 of the instant application, the same rationale is applied for claims 10 and 19 as explained above based on claim 16 of the U.S. Patent No. 6,768,772 since it is just a matter of implementing the known method steps into the corresponding elements.

Regarding claim 27 of the instant application, claim 17 of the U.S. Patent No. 6,768,772 discloses all subject matter claimed.

Regarding claim 30 of the instant application, claim 21 of the U.S. Patent No. 6,768,772 discloses all subject matter claimed.

Regarding claim 31 of the instant application, claim 22 of the U.S. Patent No. 6,768,772 discloses all subject matter claimed.

Allowable Subject Matter

6. Claims 6, 7, 15, 16, 22, 28 and 29 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

7. Claim 23 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Conclusion

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Reference Towler (US 3,101,392) is cited because it is pertinent to the method and apparatus for communicating signals.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Don N. Vo whose telephone number is (571) 272-3018. The examiner can normally be reached on Mon-Fri (9:00AM - 6:00PM).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, MOHAMMAD GHAYOUR can be reached on (571) 272-3021. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Don N. Vo/
Primary Examiner, Art Unit 2611